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State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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Governor

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Executive Director

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Division Director

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October 30, 1995

VIA FACSIMILE TRANSMISSION

Patrick Collins
Nevada Electric Investment Company
Mt. Nebo Scientific, Inc.
P. O. Box 337
Springville, Utah 84663

Re: Informal Hearing for State Violation N95-39-2-2, Nevada Electric Company,
Wellington Prep Plant, ACT/007/012, Carbon County, Utah

Dear Mr. Collins:

In accordance with a written request from Denise Dragoo dated October 17, 1995, please be advised that the Informal Hearing on state violation N95-39-2-2, Wellington Prep Plant has been established for Wednesday, November 1, 1995, beginning at 11:00 a.m.

Pertinent, written material you wish reviewed before the conference can be forwarded to me at the address listed above.

The conference will be held at the office of the Division of Oil, Gas and Mining.

Very truly yours,

James W. Carter
Director

vb

cc: D. Dragoo
L. Braxton
J. Helfrich
PFO



Mine file
Folder # 2

BEFORE THE DIVISION OF OIL GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

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IN THE MATTER OF THE APPEAL OF	:	FINDINGS, CONCLUSIONS,
FACT OF VIOLATION N95-39-2-2,		AND ORDER
NEVADA ELECTRIC INVESTMENT		
COMPANY, WELLINGTON		
PREPARATION PLANT	:	CAUSE NO. ACT/007/012

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On November 3, 1995, the Division of Oil, Gas and Mining ("Division") held an informal hearing concerning the fact of violation issued to Nevada Electric Investment Company ("NEICO") for the above-referenced Notice of Violation ("NOV"). The following individuals attended:

Presiding:	James W. Carter Director
Petitioner:	Denise Dragoo, Esq. Patrick D. Collins Greg Poole
Division:	Joe Helfrich Steve Demczak Daron Haddock Sharon Falvey

The Findings, Conclusions, and Order in this matter are based on information provided by the Petitioner in connection with this informal hearing and on information in the files of the Division.

FINDINGS OF FACT

1. Notice of this hearing was properly given.

2. Violation N95-39-2-2, part 2 of 2, was written for "Failure to maintain slopes of 2H:1V" on the outslope of the coarse refuse pile adjacent to the railroad tracks in the permit area. The Violation cited rules R645-301-536.800 and R645-301-553.250.

3. R645-301-553.250 provides: "553.251. The final configuration for the refuse pile will be suitable for the approved postmining land use....The grade of the outslope between terrace benches will not be steeper than 2h:1v (50 percent)."

4. R645-301-536.800 refers to R645-301-528.322 which provides: "Refuse Piles. Each pile will meet the requirements of MSHA, 30 CFR 77.214 and 30 CFR 77.215..." 30 CFR 77.215 provides, in pertinent part: "(h) After October 31, 1975 new refuse piles and additions to existing refuse piles shall be constructed in compacted layers not exceeding 2 feet in thickness and shall not have any slope exceeding 2 horizontal to 1 vertical (approximately 27 degrees) except that the District Manager may approve construction of a refuse piles in compacted layers exceeding 2 feet in thickness and with slopes exceeding 27 degrees where engineering data substantiates that a minimum safety factor of 1.5 for the refuse pile will be attained."

5. Although NEICO has submitted to the Division engineering data concerning the refuse pile, no approval by the District Manager of MSHA has yet been submitted to the Division.

CONCLUSIONS OF LAW

1. R645-301-553.250 requires that refuse pile slopes be no steeper than 2 horizontal to 1 vertical at "final configuration" in preparation for reclamation, but does not

require that such slopes be maintained at 2h:1v at all times during the operating phase of the refuse pile.

2. R645-301-536.800, R645-301-528.322 and the MSHA regulations referred to do require the slopes of refuse piles to not exceed 2h:1v during the operating phase, unless the District Manager of MSHA has approved a greater slope.

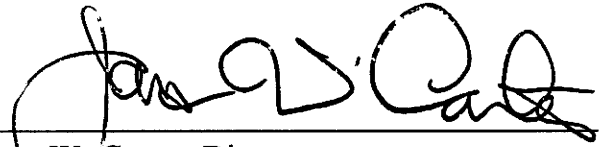
3. The steeper slope of the refuse pile in question constitutes a violation of R645-301-536.800 and the other regulations referred to therein, but does not constitute a violation of R645-301-553.250.

ORDER

NOW THEREFORE, it is ordered that:

1. NOV N95-39-2-2, part 2 of 2 be upheld.
2. The abatement of N95-39-2-2 be modified to require that, within 30 days, NEICO either 1) submit the approval of the District Manager of MSHA for a steeper slope than 2h:1v based upon engineering data which substantiates a minimum safety factor of 1.5 for the refuse pile will be attained, or 2) regrade the slopes of the refuse pile to achieve slopes no greater than 2 horizontal to 1 vertical.
3. The finalized assessment is due and payable to the Division 30 days from the date of the finalized assessment or this Order, whichever is later.
4. The Petitioner may appeal the determinations of fact of violation and/or the finalized assessments to the Board of Oil, Gas and Mining by filing said appeal within 30 days of the date of this Order, in accordance with statutory and regulatory requirements, including placing the assessed civil penalty in escrow.

SO DETERMINED AND ORDERED this 3rd day of November, 1995.

A handwritten signature in black ink, appearing to read "James W. Carter", written over a horizontal line.

James W. Carter, Director
Division of Oil, Gas and Mining
State of Utah

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing FINDINGS, CONCLUSIONS, AND ORDER for Cause No. ACT/007/012 to be mailed first-class, postage prepaid, on the 9th day of November, 1995, to the following:

Denise Dragoo, Esq.
Van Cott, Bagley, Cornwall & McCarthy
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